

Title	Small Claims: <i>Application and Order for Appointment of Guardian Ad Litem—Small Claims</i> (new optional form SC-115)
Summary	An optional form would implement the requirements in Code of Civil Procedure section 116.410 of the Small Claims Act, which authorizes a small claims judge to appoint a guardian ad litem to appear for a minor or incompetent person. The proposed form would also implement proposed new legislation, anticipated to go into effect on January 1, 2004, clarifying that an attorney may be appointed only if the attorney is an immediate family member, a guardian, or a conservator.
Source	Civil and Small Claims Advisory Committee
Staff	Cara Vonk, (415) 865-7669, cara.vonk@jud.ca.gov
Discussion	<p>Code of Civil Procedure section 116.410 authorizes a small claims judge to appoint a guardian ad litem to appear for a minor or an incompetent person, but no form has previously been adopted to assist an applicant and the court in effecting an appointment. A form may promote uniform statewide application of the small claims guardian ad litem provisions. The form should remain optional to give the court maximum flexibility in making an appointment on the day of trial if necessary.</p> <p>The proposed form follows closely the general civil <i>Application and Order for Appointment of Guardian ad litem—Civil</i> (form 982(a)(27)), with the following changes:</p> <p>1. The “NOTE” at the top of the form would be amended to conform to the specific requirements for appointment of a guardian ad litem in small claims court. It includes language clarifying that an attorney may not be appointed a guardian ad litem in small claims court “unless he or she is the minor or incompetent person’s (1) parent, spouse, domestic partner, grandparent, brother, sister, uncle, aunt, or child, whether natural, step, foster, or by adoption, (2) guardian, or (3) conservator.”</p> <p>This clarification was recommended by the committee and is now the subject of Judicial Council-sponsored legislation to amend Code of Civil Procedure sections 116.410 and 116.530, which will be introduced shortly as part of the Assembly Judiciary Committee Civil Omnibus bill. If passed, the legislation would be effective January 1,</p>

2004, the same effective date contemplated for the new form.

2. Item 5b on the form would be amended to delete reference to the lapse of more than 10 days from service of the summons. This would be replaced with service of the “the *Plaintiff’s Claim* (form SC-100),” on the person whose interests the guardian ad litem is to represent.

3. At the bottom of the form, the “Order” would provide that “the appointment shall be made in the minutes of the action” consistent with the proposed amendment of Code of Civil Procedure section 116.410, that “[T]he appointment shall be made in the minutes of the action and not later than the calling of the case for trial.”

The proposed form SC-115 and the proposed legislation follow.

Attachments

Code of Civil Procedure section 116.410 and section 116.530 would be amended to read:

116.410. Small Claims Standing—Minors and Incompetent Persons

(a) Any person who is at least 18 years of age and mentally competent may be a party to a small claims action.

(b) A minor or incompetent person may appear by a guardian ad litem appointed by a judge of the court in which the action is filed. An attorney may not be appointed to be a guardian ad litem unless he or she is the minor or incompetent person's (1) parent, spouse, domestic partner, grandparent, brother, sister, uncle, aunt, or child, whether natural, step, foster, or by adoption, (2) guardian, or (3) conservator. The appointment shall be made in the minutes of the action and not later than the calling of the case for trial.

116.530. Appearance by Attorney; Restrictions

(a) Except as permitted by this section, no attorney may take part in the conduct or defense of a small claims action.

(b) Subdivision (a) does not apply if the attorney is appearing to maintain or defend an action (1) by or against himself or herself, (2) by or against a partnership in which he or she is a general partner and in which all the partners are attorneys, ~~or~~ (3) by or against a professional corporation of which he or she is an officer or director and of which all other officers and directors are attorneys, or (4) as a family member, guardian, or conservator appearing on behalf of a minor or an incompetent person pursuant to Code of Civil Procedure section 116.410.

(c) ***

- ☐ Continued on Attachment 5a.

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PLAINTIFF: DEFENDANT:	CASE NUMBER:
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5. b. ☐ The *Plaintiff's Claim* (form SC-100) in the above-entitled matter was served on the person named in item 3, and no application for the appointment of a guardian ad litem has been made by the person identified in item 3 or any other person.
- c. ☐ the person named in item 3 has no guardian or conservator of his or her estate.
- d. ☐ the appointment of a guardian ad litem is necessary for the following reasons (*specify*):

☐ Continued on Attachment 5d.

6. The proposed guardian ad litem's relationship to the person he or she will be representing is:
- a. ☐ related (*state relationship*):
- b. ☐ not related (*specify capacity*):
7. The proposed guardian ad litem is fully competent and qualified to understand and protect the rights of the person he or she will represent and has no interests adverse to the interests of that person. (*If there are any issues of competency or qualification or any possible adverse interests, describe and explain why the proposed guardian should nevertheless be appointed*):

☐ Continued on Attachment 7.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME)		(SIGNATURE OF APPLICANT)
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CONSENT TO ACT AS GUARDIAN AD LITEM

I consent to the appointment as guardian ad litem under the above petition.

Date:

(TYPE OR PRINT NAME)		(SIGNATURE OF PROPOSED GUARDIAN AD LITEM)
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ORDER ☐ EX PARTE

THE COURT FINDS that it is reasonable and necessary to appoint a guardian ad litem for the person named in item 3 of the application, as requested.

THE COURT ORDERS that (*name*):

is hereby appointed as the guardian ad litem for (*name*):

for the reasons set forth in item 5 of the application. The appointment shall be made in the minutes of the action.

Date:

JUDICIAL OFFICER	<input type="checkbox"/> SIGNATURE FOLLOWS LAST ATTACHMENT
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